



2025:AHC:157132

A.F.R

Reserved On:- 19.08.2025
Delivered On:- 08.09.2025

**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 6662 of 2024**

Juvenile -X

.....Revisionist(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Ashwani Kumar Mishra
Counsel for Opposite Party(s)	:	G.A.

Court No. - 47

HON'BLE SIDDHARTH, J.

1. Heard Sri Anurodh Tripathi Advocate holding brief of Sri Ashwani Kumar Mishra, learned counsel for the revisionist; learned A.G.A. for the State and perused the trial court record

2. The present criminal revision has been filed challenging the impugned judgment and order dated 14.11.2024 passed by Juvenile Justice Board / Additional Sessions Judge / Special Judge, POCSO Act, Jhansi in Criminal Appeal No. 31 of 2024 (Juvenile X vs. State of U.P and Another) as well as order dated 09.05.2023 passed by Juvenile Justice Board, Jhansi in Case no. 675 of 2023 (State vs. Sagar Dheemar) under Sections- 363, 366 IPC and Section 3(2)5 of SC/ST Act and Section 11/12 POCSO Act, arising out of Case Crime No. 53 of 2020, Police Station- Kotwali, District- Jhansi whereby Juvenile Justice Board allowed application of prosecution filed under Section 15 of Juvenile Justice Act, 2015.

3. The Juvenile Justice Board by the order dated 09.05.2023 held that revisionist, whose age was earlier determined on 18.08.2020 as 17 years, 11 months and 9 days has committed heinous offence and deserves tried as adult. The Board further recorded finding that the revisionist was mentally and physically capable of committing the alleged offence and was also able to understand the consequences of his act as well as the circumstances in which the offence was allegedly committed. Relying upon the questioning of the revisionist by the Board and the report submitted by the psychologist, the

Board directed that the case of the revisionist be transmitted to the Children's Court for his trial as an adult. The aforesaid order dated 09.05.2023, passed by the Juvenile Justice Board, was challenged by the revisionist before the Children's Court by way of an appeal.

4. The Appellate Court, upon consideration, held that since the revisionist stands implicated under Sections 363 and 366 of the Indian Penal Code as well as Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the offences alleged against him fall within the category of heinous offences. Accordingly, forwarding of his case to the Children's Court by the Juvenile Justice Board for trial of the revisionist as an adult was found to be justified. Aggrieved by the aforesaid order, the present revision has been preferred before this Court.

5. Learned counsel for the revisionist has submitted that the following punishment has been provided for committing the offences under Sections- 363, 366 IPC and Section 3(2)(v) of SC/ST Act :-

363. Punishment for kidnapping.- Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.- Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

Section 3(2)(va) in The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs

to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;

6. Reliance has been placed in the judgment of the Apex Court in the case of ***Shilpa Mittal vs. State of NCT of Delhi reported in AIR 2020 SC 405***. In paragraph 2 of the aforesaid judgment of the Apex Court has framed the relevant question as follows :-

"Whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence, or providing a minimum sentence of less than 7 years, can be considered to be a 'heinous offence' within the meaning of Section 2(33) of The Juvenile Justice (Care and Protection of Children) Act, 2015?" is the extremely important and interesting issue which arises in this case."

7. The aforesaid issue was considered by the Apex Court. The Apex Court has answered this question after discussions from paragraph nos. 30 to 36 which are as follows :-

30. We must also while interpreting an Act see what is the purpose of the Act. The purpose of the Act of 2015 is to ensure that children who come in conflict with law are dealt with separately and not like adults. After the unfortunate incident of rape on December 16, 2012 in Delhi, where one juvenile was involved, there was a call from certain sections of the society that juveniles indulging in such heinous crimes should not be dealt with like children. This incident has also been referred to by the Minister in her introduction. In these circumstances, to say that the intention of the Legislature was to include all offences having a punishment of more than 7 years in the category of 'heinous offences' would not, in our opinion be justified. When the language of the section is clear and it prescribes a minimum sentence of 7 years imprisonment while dealing with heinous offences then we cannot wish away the word 'minimum'.

31. No doubt, as submitted by Mr. Luthra there appears to be a gross mistake committed by the framers of the legislation. The legislation does not take into consideration the 4th category of offences. How and in what manner a juvenile who commits such offences should be dealt with was something that the Legislature should have clearly spelt out in the Act. There is an unfortunate gap. We cannot fill the gap by saying that these offences should be treated as heinous offences. Whereas on the one hand there are some offences in this category which may in general parlance be termed as heinous, there are many other offences which cannot be called as heinous offences. It is not for this Court to legislate. We may fill in the gaps but we cannot enact a legislation, especially when the Legislature itself has enacted one. We also have to keep in mind the fact that the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 is that children should be protected. Treating children as adults is an exception to the rule. It is also a well settled principle of

statutory interpretation that normally an exception has to be given a restricted meaning.

32. We may add that the High Courts of Bombay 9, Patna¹⁰, and Punjab and Haryana¹¹, have taken a view that the category of 'heinous offences' cannot include offences falling within the 4th category. No contrary view has been brought to our notice. We see no reason to take a different view.

33. It was urged by Mr. Luthra that while defining 'heinous offences' the word 'includes' has been used which would mean that the definition is an inclusive definition and includes things not mentioned in the definition. We are not impressed with this argument since the definitions of 'petty offences' and 'serious offences' also use the word 'includes'. In fact the word 'includes' is a surplusage. The word 'includes' in the three definition 9 Saurabh Jalinder Nangre & Ors. vs. State of Maharashtra, 2019 (1) Crimes 253 (Bom). 10 Criminal (SJ)No.1716 of 2018 titled Rajiv Kumar vs. State of Bihar. Judgment dated 18.09.2018 11 CRR 1615 of 2018 titled Bijender vs. State of Haryana and another, judgment dated 21st May, 2018. clauses does not make any sense. There is nothing else to be included. The definition is complete in itself.

34. From the scheme of Section 14, 15 and 19 referred to above it is clear that the Legislature felt that before the juvenile is tried as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult. This also clearly indicates that the meaning of the words 'heinous offence' cannot be expanded by removing the word 'minimum' from the definition.

35. Though we are of the view that the word 'minimum' cannot be treated as surplusage, yet we are duty bound to decide as to how the children who have committed an offence falling within the 4th category should be dealt with. We are conscious of the views expressed by us above that this Court cannot legislate. However, if we do not deal with this issue there would be no guidance to the Juvenile Justice Boards to deal with children who have committed such offences which definitely are serious, or may be more than serious offences, even if they are not heinous offences. Since two views are possible we would prefer to take a view which is in favour of children and, in our opinion, the Legislature should take the call in this matter, but till it does so, in exercise of powers conferred under Article 142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed 'serious offences'.

36. In view of the above discussion we dispose of the appeal by answering the question set out in the first part of the judgment in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter."

8. A perusal of Section 363 IPC reveals that no minimum sentence has been prescribed for committing the offence contemplated therein. The provision stipulates that the punishment may extend to seven years along with fine. Similarly, under Section 366 IPC, the punishment may extend to ten years along with fine. Insofar as Section 3(2)(v) of the SC/ST Act is concerned, it applies only in cases where an offence under the IPC is punishable with imprisonment for a term of ten years or more and is committed against a person or property with the knowledge that such person is a member of a Scheduled Caste or a Scheduled Tribe. The said provision mandates punishment with imprisonment for life and fine.

9. In the present case, however, from a plain reading of the F.I.R. as well as the statement of the victim, it is evident that the revisionist did not commit any act against the victim with the knowledge that she belonged to Scheduled Caste. On the contrary, the victim has admitted that she was in a consenting relationship with the revisionist. She has further not made any allegation that the alleged act was committed against her on account of her caste. She has admitted knowing the mobile number of revisionist and talking to him. Since under Sections- 363 and 366 IPC, there is no minimum sentence provided and care comes in the 4th category of cases defined in Shilpa Mittal (Supra). Hence, the revisionist cannot be said to have committed any heinous offence. At the most he committed a serious offence as per the dictum of Apex Court in the case of Shilpa Mittal (Supra) considered hereinabove. Therefore, the trial of the revisionist is required to be conducted as per Section 14(5)(e) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

10. The impugned orders are hereby set aside.

11. The criminal revision is accordingly, ***allowed***.

12. The record of this case shall be sent to the Juvenile Justice Board, Jhansi where the revisionist shall be tried as an accused implicated for committing the serious offence.

13. The office is directed to return the lower court record to the court concerned forthwith along with copy of this order.

September 8, 2025
Rohit

(Siddharth,J.)